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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea.

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea: comments by the State*

Comments by the Republic of Korea on the Report of the Working Group on the issues of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea

1. The Government of the Republic of Korea notes with appreciation the report of the Working Group on the issues of human rights and transnational corporations and other business enterprises (WG) on its visit to the country from 23 May to 1 June 2016.

2. We believe the WG's recommendations stem from its expertise and attentive observation of our domestic policies and practices. We acknowledge the WG's observation on our willingness to study international best practice and improve policies and practices relating to business and human rights. We also find it encouraging that the WG commends the activities by some of our national agencies, local authorities and business enterprises to promote and protect human rights in relation to business conduct.

3. However, there are some paragraphs in the WG's report that we want to make comments on. Our comments include information on specific measures to address human rights abuses in the workplace, as well as those resulted from business activities in the country. Also, there are issues regarding our legislative framework on labour standards and the public procurement system.

4. In order to respect, protect and fulfill human rights and fundamental freedoms in the context of business activities, the Government of the Republic of Korea will continue to promote the implementation of the Guiding Principles on Business and Human Rights (the Guiding Principles) and consult with the WG to this end.

5. Our specific comments on some paragraphs of the report are set out below.

Para. 24

6. Regarding unfair labor practices at Yoosung Enterprise Co., after conducting a special inspection in 2011 and a random inspection in 2013, the Ministry of Employment and Labor (MOEL) sent the case to the prosecutors' office for "partial prosecution". During the 2013 inspection, MOEL also investigated Hyundai Motor Company for its involvement in unfair labor practices. When concerns were raised about abusive labor management by the company after a union member's suicide, MOEL organized a temporary health examination and management committee (Jul. 15, 2016) and ordered Yoosung Enterprise Co. to conduct a temporary health examination (Jul. 29, 2016). For Hyundai Motor Company's alleged involvement in unfair labor practices, the Korean Metal Workers' Union brought the case to the prosecution (Feb. 3, 2016), who is still investigating the case.

Para. 38

7. During the selection process of the winning bidder, the Public Procurement Service (PPS) promotes social responsibility by giving additional points to socially disadvantaged

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enterprises and enterprises that reflect the social and environmental value in the eligibility test for goods, services, and construction works.

- Giving additional points to socially disadvantaged enterprises (women-owned, disabled, small enterprises) and enterprises that reflect the social and environmental value (employment, environmental certification, human rights etc.)
- Multiple Award Schedule (MAS)-contracted goods and services, the 2nd stage competition has evaluation criteria that include selective points for socially disadvantaged enterprises, enterprises with high employment rate of severely disabled, women etc., and social enterprises.
- Construction work projects over USD 30 million, PPS implements a comprehensive evaluation method, which the bidder gets the highest score comprehensively based on bid price, execution capability, and social responsibility[1].

<e.g. Table of Evaluation Criteria for Social Value on Public Goods Procurement>

Category	Eligibility Test (Additional Point)		MAS 2nd Stage Competition (Scales of Point)	
Supporting socially disadvantaged enterprises	Women owned (0.25~1.25 Point)	Period of women owned business	Disabled owned (less than 5 points)	products from severely disabled enterprises
		High employment rate of women		Social enterprises
		High gender equal employment rate firm		Disabled owned firm
	Disabled owned(1~2points)	Disable owned		Standard disabled production
		High employment rate of disables		early stage of start-up firms
	SMEs(Manufacturing)(1~2points)	SME, Micro-enterprise		women owned
Reflection of Social / Environmental value	Creation of employment(1~3points)	Excellent firm on hire new recruits	Excellent on hire employment (less than 5 points)	Excellent on hire new recruits
	Joint supply and demand(0.5~1.5points)	Joint supply and demand with socially disadvantaged firms		
	Green product certification(0.75~1.5points)	Certificate of Green technology		
		Certificate of excellent recycle		
		Certificate of high energy efficiency of devises		
		Environmental		

[1] Indicator of social responsibility includes construction safety, fair subcontracting, participation of local suppliers and prompt payment of wages.

		product declaration		
		1st class of energy consumption		
		Certificate of new renewable energy		
	others(0.2~5points)	Certificated family friendly firms	Others (Less than 5points)	Social enterprises
		Excellent firm on labor-management culture		
		Excellent firm on sub-contracting management		
		Participated firm on Learning and Working System		
		Firm on creation of flexible working hour jobs		
		Participated firm on work and life balance campaign		

PPS established a legal framework that reflects various social and environmental values in public procurement process. (Act 14526, amended on Jan. 2017, enforced in July 2017.)

- Art 14526. 5-2(Promotion on social responsibilities) In order to encourage social responsibilities of enterprises, the Administrator of the Public Procurement Service may reflect the social and environmental value, such as the environment, human rights, labor, employment, free trade, and consumer protection, to the procurement procedures.

Para. 43

8. (Yellow union) In Korea, any employer's attempt to establish a "yellow union" to interfere with autonomous union activities in the workplace is strictly prohibited as an unfair labor practice. More specifically, any employer involved in such a prohibited practice shall be punished with no more than two years in prison or no more than KRW 20 million in fine. Apart from criminal punishment, remedies may be sought through the labor relations commission against unfair labor practices. When the labor relations commission finally decides that a remedy should be made, the employer is required to follow the decision or would face criminal punishment, no more than three years in prison or no more than KRW 30 million in fine.

9. The Korean government's zero tolerance of unfair labor practices has been unwavering. The government has been examining not only reports or accusations of unfair labor practices made by labor but also alleged unfair labor practices to verify whether those allegations are true. This is because the government knows that any unfair labor practice poses a fundamental threat to the order of labor relations. Considering that unions and employers find it difficult to use their real names when reporting grievances, the government has established an "online unfair labor practice reporting center" where they

can report grievances anonymously. For reports, complaints or accusations submitted to the reporting center, the government has been thoroughly investigating them and taking strict action.

10. (**Single bargaining channel system**) The single bargaining channel system in Korea does not violate the right to organize, the right to collective bargaining and the right to collective action. The single bargaining channel system was introduced as part of a tripartite agreement in order to promote unified working conditions in the workplace and, at the same time, address duplicated bargaining, excessive bargaining costs and other side effects of multi-unionism as multiple unions have become allowed to engage in separate bargaining at one enterprise. The single bargaining channel system includes a democratic process of reflecting a large number of union members and a duty of fair representation designed to protect minority union members who lack power to organize bargaining representative unions. This explains why the system was upheld by Constitutional Court as constitutional and has been considered in conformity with international standards by the ILO as the system's way of selecting representative groups within the bargaining unit. The single bargaining channel system comes in various forms in many countries, including the U.S., Canada and the U.K., to realize the principle of one bargaining for one company and establish a bargaining order.

11. (**Lead company's termination of a subcontracting agreement after the establishment of an in-house subcontractor workers' union**) The Korean Supreme Court ruled that the lead company constituted the employer to receive a remedy order for engaging in unfair labor practices against the in-house subcontractor workers' union. Since the ruling, any lead company engaging in unfair labor practices likely to discourage union activities, such as terminating contracts with subcontractors, to control and intervene in subcontractors' unions has faced criminal punishment, and apart from criminal punishment, the three fundamental labor rights of in-house subcontractor workers' unions have been protected through remedy procedures at the labor relations commission.

12. (Compensation for damages against illegal industrial action) Employers are not allowed to cut the wages of their employees simply because of their participation in strikes under the Korean law. Thus, the argument about "deducting wages from workers who went on strike to pay for lost profits incurred by industrial action" is not true. Furthermore, Article 3 of the Trade Union and Labor Relations Adjustment Act provides, "When an employer has suffered damages due to collective bargaining or industrial action under this Act, he shall not claim damages against a trade union or workers". This means no civil liability shall be imposed on unions engaging in lawful industrial action. However, it would be a problem when a union engages in unlawful industrial action by occupying production facilities, relying on an act of violence or vandalism, etc. Giving immunity to such illegal industrial action would run counter to the idea of justice and go against the Constitution of the Republic of Korea. Anyone, including unions, should naturally take responsibility after engaging in action which fails to meet the legal order of the country. For the liability to compensate for damages, it is not something that can automatically be imposed on the workers just because the employer argues it should be; it is the court, a third party, which decides whether the workers are liable or not. It is unreasonable to say that the court's recognition of the liability of a union engaging in unlawful industrial action is no different from a denial of the key element of the right to strike.

Para 54

13. The Korean NCP is established directly under the Ministry of Trade, Industry and Energy (MOTIE), and carries out the core tasks set out in the OECD Guidelines for Multinational Enterprises ('the Guidelines'), including providing 'good offices' to stakeholders and adopting final statement. The Korean Commercial Arbitration Board

provides an auxiliary support by promoting the Guidelines and informing stakeholders of relevant procedures.

14. To reflect various opinions of multi-stakeholders, the Korean NCP has reorganized its committee to include the Ministry of Environment (ME) and the Ministry of Employment and Labour (MOEL) as stated in the report. Furthermore, in February 2017 we appointed additional experts in the field of labour relations and arbitration in an effort to better accommodate the views of multi-stakeholders.

15. With regard to the proposal for engaging in a peer review, the Korean NCP had already expressed its willingness to participate in October 2016, and officially notified the OECD Secretariat in March 2017.

Para.55

16. In accordance with the Act on the Promotion of Workers' Participation and Cooperation, the government runs a grievance-handling system where any business or place of business with 30 employees or more is required to designate no more than three grievance-handling members to deal with employees' grievances. The grievance-handling system is designed to address all kinds of complaints and difficulties employees suffer, so that they can focus on their work with passion and creativity. Any employee may report his/her grievance to grievance-handling members verbally or in writing; when a grievance is reported, the grievance-handling members are required to deal with the case without delay and then notify the employee of the action taken and its results within 10 days. The government has continued to provide various support and guidance on the grievance-handling system to ensure that it is more widely used.